

REMARKS

Responsive to the Office Action mailed August 9, 2007 and with an extension of time of TWO MONTHS, the present paper is timely filed on or before January 9, 2008.

By the present paper, claims 1 and 9 are amended and no claims are cancelled. Claim 8 was previously withdrawn. Accordingly, claims 1 – 7 and 9 – 11 are under examination.

Entry of the amendments and reconsideration of the Application are respectfully requested.

The Claim Amendments:

Claim 1 is amended to particularly point out that the diet (feed) contains $\geq 1\%$ of one or more omega-3 fatty acids. Support for the amendment can be found in the specification at, for example, para [0007].

Claim 9 is amended to particularly point out that the method is carried out with a composition (feed) having $\geq 1\%$ of one or more omega-3 fatty acids. Support for the amendment can be found in the specification at, for example, para [0007].

Applicants respectfully submit that the amendments do not introduce new matter into the Application.

The Terminal Disclaimers:

By contemporaneously filed Terminal Disclaimer, Colgate Palmolive Corporation, the owner of all right, title, and interest in and to the present application, disclaims, subject to the limitations in the disclaimer document, the term of any patent issuing from the present Application that extends beyond the term of any patent issuing from commonly owned United States Patent Application 10/912,864.

No Terminal Disclaimer with respect to United States patent Application 11/057,718 is filed herewith.

The Declaration of Steven C. Zicker:

The signed Declaration under 37 C.F.R. § 1.131 of inventor Steven C. Zicker, DVM, Ph.D., accompanies this paper.

Applicants draw the Office's attention to that fact that, in prior Office Actions, the claims were rejected under 35 U.S.C. § 102. According to the Office's own Rules, a Declaration under 35 U.S.C. § 1.131 would have been improper. *See* M.P.E.P. § 715.05.

All prior rejections based on 35 U.S.C. § 102 have now been expressly withdrawn (Office Action at page 2). The claims are now rejected under 35 U.S.C. § 103. Accordingly, Applicants respectfully submit that the contemporaneously filed Rule 131 Declaration is timely filed.

With reference to the Declaration at paragraphs 4, 5, 6, and 7, and Exhibits to the Declaration, at a time before April 12, 2002, Applicants had possession of a feed, useful as a canine diet, containing at least about 1% by weight, on a dry matter basis, omega-3 fatty acids (paragraph 4). Such a feed was used in *in vivo* animal studies in which dogs fed a diet of a composition within the scope of the claims were observed to exhibit improved behavior, evaluated by the DISHA cluster of behavioral categories (paragraphs 5 and 6, Exhibits A and C), relative to the dogs in the control group that were fed a diet not fortified in omega-3 fatty acids (paragraphs 5 and 7, Exhibit B). Thus, at a time before April 12, 2002, Applicants practiced, observed the unexpected results of, and hence were in possession of their inventive method as claimed.

Applicants respectfully submit that the Declaration and Exhibits thereto demonstrate that, at a time before April 12, 2002, Applicants practiced a method on which the claims under examination plainly read. *See* M.P.E.P. § 715.02.

Double Patenting Rejections:

Claims 1-5, 7, and 9-11 were provisionally rejected under the judicially created doctrine of "obviousness-type double patenting" in view of commonly owned U.S.S.N. 10/912,864. Applicants respectfully submit that the contemporaneously filed Terminal Disclaimer obviates the rejection and that the rejection should be withdrawn.

Claims 1-5, 7, and 9-11 were provisionally rejected over claims 1, 7, 13, 19, and 26-29 of U.S.S.N. 11/057,718 (the '718 Application) under the judicially created doctrine of "obviousness type double patenting". Because U.S.S.N. 11/057,718 is not a proper reference against the present Application and further because, in any event, the difference between the subject matter of the rejected claims and the asserted claims of the '718 patent is such that the subject matter of the rejected claims, as a whole, would not have

been obvious in view of the asserted claims, if such were properly applied art, Applicants respectfully traverse.

The present Application was filed October 3, 2002, ten months before the earliest possible effective date of the '057 Application. Applicants respectfully submit that the '057 Application is not properly applied against the present Application.

More important, the asserted claims of the '718 Application are drawn to a means for and methods of influencing a *physiological* condition (joint disorders). The rejected claims are drawn to a means for and methods of influencing behavior, which manifests the *psychological* condition of the animal. The Office has not proffered any rational for the assertion *sub silentio* that one skilled in the veterinary arts would have expected that a means for influencing e.g. arthritis, would also influence behavior measured by, for example, the DISHA cluster. The Office has not articulated *any* nexus recognized by one skilled in the veterinary arts between the *psychological* canine behavioral problems addressed by the present claims and the physiological conditions that are the subject of the '718 Application.

For the foregoing reasons, Applicants respectfully submit that the provisional obviousness type double patenting rejection over claims 1, 7, 13, 19, and 26-29 of the '718 Application is improper and should be withdrawn.

Claim Rejections Under 35 U.S.C. § 103:

Claims 1-7 and 9-10 were rejected under 35 U.S.C. § 103 as allegedly obvious over WO 2004/006688 A1 (Davenport A) in view of US 2003/0194478 A1 (Davenport B). For the reasons set out below, Applicants respectfully traverse.

Applicants respectfully submit that the earliest possible effective date of Davenport A as prior art under 35 U.S.C. § 102(e) is July 12, 2002, the filing date of United States Provisional Patent Application 60/3905539, to which Davenport A claims priority. Applicants further respectfully submit that the earliest possible effective date of Davenport B as prior art is April 12, 2002, the filing date of the regular utility application.

As discussed above, Applicants were in possession of a method squarely falling within the scope of the rejected claims at a time before April 12, 2002. Accordingly,

Applicants respectfully submit that neither Davenport A nor Davenport B are prior art to the present Application and that the rejection should therefore be withdrawn.

Claims 1-7 and 9-11 were rejected as allegedly obvious over Reinhart, EP 0 687 257 A1 (Reinhart). Because the skilled artisan of the day reading Reinhart would not have reasonably expected that the pet food product of Reinhart would have a positive effect on canine behavior, as Applicants have used that term and, more important, would have concluded that a pet food product should be fortified with *both* at least one omega-3 fatty acid *and* at least one omega-6 fatty acid Applicants respectfully traverse.

Reinhart discloses a pet food product that must contain *both* omega-3 *and* omega-6 fatty acids in specific ratios. *See* abstract. The pet food product of Reinhart is squarely intended for the reduction of skin irritation (dermatitis, puritis) in a pet (companion) animal. As the Office correctly notes, Reinhart is silent concerning the effect of the pet food product therein disclosed on the behavior of the pet animal.

At page 6, lines 20-22, Reinhart discloses that his pet food product - fortified with *both* omega-3 *and* omega-6 fatty acids - may contribute to “the comfort and well being” of the pet animal. The Office seizes on this single gratuitous statement in Reinhart as instilling in the skilled artisan a reasonable expectation that the pet food product of Reinhart would have a positive effect on canine behavior, as Applicants use that term. Scratching, by itself, is not behavior as understood by animal behaviorists.

Applicants respectfully submit that the skilled artisan of the day would not have looked to a means and method for ameliorating dermatitis or puritis in a dog for guidance in searching for a means and method for influencing, for example, any behavior associated with canine ARCD, as Applicants’ inventive method does. For this reason alone, Applicants respectfully submit that the rejection is improper and should be withdrawn.

But Applicants do not base their traversal on these grounds alone. Applicants respectfully submit that Reinhart forcefully teaches away from use of a pet food product that is *not fortified* with *both* an omega-3 *and* an omega-6 fatty acid.

The very first page of the disclosure of Reinhart furnishes convincing support for Applicants’ respectful assertion.

At page 2, beginning at line 1, Reinhart discloses:

This invention relates to a pet food product for use in reducing inflammatory and allergic skin responses, and more particularly to a pet food composition containing omega-6 (n-6) and omega-3 (n-3) fatty acids.

This first sentence is plainly written with the conjunctive *and* connecting “omega-6” to “omega-3”.

At page 2, beginning at line 11, Reinhart discloses:

Therefore, a need exists for a pet food product that provides a healthy diet containing the positive effects of n-6 fatty acids while sufficiently offsetting their detrimental inflammatory effects by adding n-3 fatty acids. In other words, a pet food product is needed that not only contains n-3 fatty acids, but also uses
 15 a ratio of n-6 to n-3 fatty acids that provides the beneficial effects of both fatty acids in pet animals.

Reinhart plainly teaches that his pet food product should have *particular relative amounts of omega-6 and omega-3 fatty acids*.

Applicants’ inventive method does not employ a diet fortified with *both* omega-6 *and* omega-3 fatty acids in a particular ratio as taught by Reinhart.

Modification of Reinhart to arrive a feed composition useful in the practice of Applicants’ inventive method - using a feed not fortified with omeg-6 fatty acids in a ratio taught as critical by Reinhart - would require ignoring these express teachings of Reinhart. Applicants respectfully submit that Reinhart squarely teaches away from a diet, like the diet useful in the practice of Applicants’ inventive method, that is not simultaneously fortified with both an omega-3 **and** an omega-6 fatty acid **in very specific ratios**.

For the foregoing reasons, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Conclusion:

Based on the foregoing amendments and remarks, Applicants respectfully submit that the claims are in condition for allowance, which allowance is earnestly solicited.


If, in the opinion of the Examiner, a telephone conference would advance prosecution of the Application, the Examiner is invited to telephone the undersigned attorney.

**REQUEST FOR EXTENSION OF TIME AND AUTHORIZATION TO DEBIT
DEPOSIT ACCOUNT**

Applicants hereby request an extension of time to reply of TWO MONTHS. Please charge the required fee to Deposit Account 50-2957. Similarly, please charge any shortage in fees or credit any excess fees during the entire pendency of this Application to Deposit Account Number 50-2957.

Respectfully submitted,

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